

PUBLIC NOTICE



**US Army Corps
of Engineers
Kansas City District**

Issue Date: October 13, 2006

Expiration Date: November 27, 2006

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS STATE OF KANSAS

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its nationwide permits (NWP).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at www.regulations.gov. Instructions for submitting comments are provided in the September 26, 2006 Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Regional conditions approved by the Division Engineer become effective when the NWPs become effective.

The Kansas City District is seeking comments on the proposed regional conditions (Enclosure 2) for the State of Kansas. The Kansas City District is also seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of Kansas. Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to Mr. Joshua Marx, U.S. Army Corps of Engineers, Kansas City District Office, 700 Federal Building, 601 East 12th Street, Kansas City,

Missouri 64106 or via email at Joshua.a.marx@usace.army.mil. Comments relating to regional conditions are due by November 27, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices. In response to the comments received on regional conditions, an additional public notice announcing proposed new and revised regional conditions may be published depending on the extent of proposed changes.

When the final NWP's are issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 water quality certification consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWP's. After that 60-day period, the NWP's and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP's, are available for viewing on the Internet at the www.regulations.gov site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWP's that are issued. In addition, supplemental decision documents will be issued by division engineers to address their determinations concerning regional conditions for the NWP's.

Enclosed (Enclosure 1) is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through www.regulations.gov (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below.

Copies of the Federal Register notice and the draft decision documents will also be available at <http://www.regulations.gov> in docket ID number COE-2006-0005. The Corps home page is: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpoaccess.gov/fr/index.html>.

ENCLOSURE 1

Index of Proposed Nationwide Permits, Conditions, and Definitions

Proposed Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

- A. Emergency Repair Activities
- B. Discharges into Ditches and Canals
- C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
- D. Commercial Shellfish Aquaculture Activities
- E. Coal Remining Activities
- F. Underground Coal Mining Activities

Proposed Nationwide Permit General Conditions

- 1. Navigation
- 2. Aquatic Life Movements
- 3. Spawning Areas
- 4. Migratory Bird Breeding Areas
- 5. Shellfish Beds
- 6. Suitable Material
- 7. Water Supply Intakes
- 8. Adverse Effects from Impoundments
- 9. Management of Water Flows
- 10. Fills Within 100-Year Floodplains
- 11. Equipment
- 12. Soil Erosion and Sediment Controls
- 13. Removal of Temporary Fills
- 14. Proper Maintenance
- 15. Wild and Scenic Rivers
- 16. Tribal Rights
- 17. Endangered Species
- 18. Historic Properties
- 19. Designated Critical Resource Waters
- 20. Mitigation
- 21. Water Quality
- 22. Coastal Zone Management
- 23. Regional and Case-by-Case Conditions
- 24. Use of Multiple Nationwide Permits
- 25. Transfer of Nationwide Permit Verifications
- 26. Compliance Certification
- 27. Pre-Construction Notification

Proposed Nationwide Permit Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Enhancement
Ephemeral stream
Establishment (creation)
Independent utility
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

ENCLOSURE 2

Proposed Regional Conditions for the State of Kansas

1. NWP 3 – Maintenance. The permittee must notify the District Engineer when repairing, rehabilitating or replacing low water crossings when discharges of dredged or fill material would raise or lower the lowest elevation of the crossing by a total of 12-inches or more, or when removing the structure. The permittee must propose and employ measures to mitigate the potential impact of impounding gravel above the low water crossing or of releasing impounded-gravel downstream of the structure. Such mitigation might include: removing impounded gravel in the unstable area upstream of the low water crossing to prevent it from being transported downstream and/or constructing a notched weir to slow the release of impounded gravel from upstream of the low water crossing.

2. NWP 12 - Utility Activities. The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) when new utility line construction activities parallel a stream and has multiple stream crossings or cross forested wetlands (example: a gravity fed utility line that crosses a stream multiple times). Impacted stream buffers and forested wetlands must be revegetated with native species similar to the composition removed (i.e. trees for impacted wooded stream buffer and grasses for impacted herbaceous stream buffer), except for a minimal corridor that is essential for operation and maintenance of the utility line. The applicant must submit rationale for the minimum width necessary for the operation and maintenance corridor. The PCN must include a revegetation plan detailing the native plantings.

3. NWP 13 - Bank Stabilization. Broken concrete used as bank stabilization must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Applicants must break all large slabs to conform to the well graded requirement. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume. All reinforcement rods, trash, asphalt, and other extraneous materials must be removed from the broken concrete prior to placement in waters of the United States.

4. NWP 23 - Approved Categorical Exclusions. The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for all regulated NWP 23 activities in waters of the United States. In addition to information required by NWP general condition 27, the notification must identify the approved categorical exclusion that applies (i.e. list Federal Register citation) and include documentation that the project fits the categorical exclusion.

5. NWP 27 - Stream and Wetland Restoration Activities. NWP 27 does not authorize discharges associated with the relocation of forested wetlands.

6. NWP 43 - Stormwater Management Facilities. This NWP does not authorize the retention of water, in excess of that required to meet stormwater management requirements, for other purposes such as recreational lakes, reflecting pools and irrigation.

7. NWP A – Emergency Repair Activities. This NWP does not authorize the removal of borrow material from waters of the United States to restore uplands lost.

8. NWP 14, 29, 39 – Culverts. All culverts associated with NWP 14, 29, and 39 must be designed to match existing stream bottom elevation and slope, have a vent area ratio of no less than 30 percent at bank full condition, and be the shortest length necessary to meet project purposes (i.e., perpendicular crossing vs. obtuse crossing). To the maximum extent practicable, the structure should be bottomless and contain a substrate that matches the existing stream. If a floor is needed it must be placed at the lowest scour potential of the stream. Where multiple culverts are used for a single road crossing, the center culvert must be set slightly lower than that of the other culverts to concentrate low flows.

9. Agency Coordination Requirements for Waiver of 300 Linear Foot Limit of NWP 29, 39, 40, 42, 43, 44. All requests for a waiver of the 300 linear foot limit for losses of intermittent and ephemeral streams will be coordinated in accordance with the agency coordination procedures. The applicant must provide documentation of avoidance and minimization of individual and cumulative impacts associated with the proposed project.

10. Suitable Material (Applicable to all NWPs). In addition to the specific examples in General Condition 6, the following materials are not suitable for fill activities into waters of the U.S. in conjunction with any NWP: buses or rail cars, construction or demolition debris, garbage, loose or improperly placed tires, used asphalt, liquid concrete not poured into forms, grouted riprap, bagged cement, and sewage or organic waste.

11. Mitigation Requirements (Applicable To All NWPs) Compensatory mitigation sites may require a long-term legal protection instrument such as a deed restriction, conservation easement, or other protective covenant. When the Corps determines monitoring is required for compensatory mitigation sites, the applicant must comply with Regulatory Guidance Letter 06-03.

12. Notification Requirements (Applicable to all NWPs). The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated activity which may impact a fen, bog, playa wetland, and/or forested wetland.

13. Exclusion. All NWPs are prohibited from use in that reach of Big Soldier Creek located on or within the boundaries of the property owned by the Prairie Band of Potawatomi Nation in Kansas.

14. Designated Critical Waters. The designated critical waters for the state of Kansas are listed as Appendix I. These designated critical waters include Outstanding National Resource Waters (ONRW), Exceptional State Waters (ESW), and Special Aquatic Life Uses (SALU). The designation of waters as ONRW, ESW, and SALU is subject to change in accordance with Kansas state law. The current list of ONRW, ESW, and SALU waters is located at: <http://www.nwk.usace.army.mil/regulatory/regulatory.htm>. According to General Condition 19, the following NWPs are not authorized within ONRW, ESW, and SALU: NWPs 7, 12, 14, 16, 17, 21, 29, 31, 31, 35, 39, 40, 42, 43, and 44. NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38 require notification in accordance with the "Notification" general condition of the NWPs (general condition 27).

15. Threatened & Endangered Species (Applicable to all NWP's). The following locations and waters are subject to the "Notification" general condition of the NWP's (general condition 27). The requirements of general condition 17 "Endangered Species" applies to the following waters.

- a. **Arkansas River** – That portion flowing through Barton, Cowley, Edwards, Finney, Ford, Gray, Hamilton, Kearny, Kiowa, Pawnee, Reno, Sedgwick and Sumner Counties, excluding that reach upstream of the Kansas Route 27 bridge in Hamilton County and a 12.4 mile reach within the City of Wichita metropolitan area, extending from the westbound land of Kansas Route 96 downstream to Interstate 35 (Arkansas River Shiner, *Notropis girardi*) (Interior Least Tern, *Sterna Antillarum* in Sedgwick County only).
- b. **Cimarron River** - That portion flowing through Clark, Comanche, and Meade Counties (Interior Least Tern, *Sterna antillarum* and Arkansas River Shiner, *Notropis girardi*).
- c. **Cottonwood River** - From the point of discharge of Marion Dam to its confluence with the Neosho River in Lyon County (Neosho Madtom, *Noturus placidus*).
- d. **South Fork Cottonwood River** – Downstream of Bazzarr to confluence with Cottonwood River (Neosho Madtom, *Noturus placidus*)
- e. **Neosho River** - From the point where it discharges from Council Grove Reservoir in Morris County to the point where it leaves Lyon County and from the point where it discharges from John Redmond Reservoir in Coffey County to the Kansas-Oklahoma border in Cherokee County (Neosho Madtom, *Noturus placidus*).
- f. **Spring River** - The entire main stem portion within the state of Kansas in Cherokee County (Neosho Madtom, *Noturus placidus*).
- g. **Cow Creek and tributaries** - A 144 square mile area within Crawford County whose western boundary is highway K-7, whose southern boundary is the Crawford/Cherokee county line, whose eastern boundary is the Kansas/Missouri state line and whose northern boundary is highway K-57 east of the town of Girard extended to the state line. Also included in this area is all of Cow Creek in Cherokee County (Gray Bat, *Myotis grisescens*).
- h. **Kansas River** – From its origin in Geary County downstream to the Missouri River (Bald Eagle, *Haliaeetus leucocephalus*) and from its origin in Geary County downstream to Lecompton in Shawnee County (Interior Least Tern, *Sterna Antillarum* and Piping Plover, *Charadrius melodus*).
- i. The following locations may contain the Topeka Shiner, *Notropis topeka*, which has been listed as endangered, and are subject to the notification requirement above:
 - 1. **Butler County** – Headwaters of the South Fork Cottonwood River (Sec. 4, 9, 16 & 21 T23S, R8E).

2. **Chase County** – Bloody Creek, Collett Creek, Diamond Creek, Gannon Creek, Jack Creek, Little Cedar Creek, Mercer Creek, Mulvane Creek, Rock Creek, Schaeffer Creek, Shaw Creek, Unnamed tributary of Thurman Creek (Sec. 31 & 32 T22S, R9E), Unnamed tributary of Mercer Creek (Sec. 30 & 31 T22S, R 8E), Middle Creek, Unnamed tributary of Middle Creek (Sec. 4, 9 & 10 T19S, R6E), Unnamed tributary of Diamond Creek (Sec. 9 T19S, R7E), Unnamed tributary of Fox Creek (Sec. 31 T18S, R8E).
 3. **Dickinson County** – Cary Creek, Middle Branch Lyons Creek, Rock Springs Creek, West Brach Lyons Creek.
 4. **Geary County** – Rock Springs Creek, Davis Creek.
 5. **Greenwood County** – Thurman Creek, Unnamed tributaries of Thurman Creek (Sec. 6 T23S, R9E; Sec. 1 T23S, R8E).
 6. **Marion County** – Collett Creek, Middle Creek, Mud Creek.
 7. **Marshall County** - North Elm Creek, Clear Fork Creek.
 8. **Morris County** - Collett Creek, Middle Creek.
 9. **Pottawatomie County** - Clear Fork Creek.
 10. **Riley County** – Deep Creek, Seven-Mile Creek, Little Arkansas Creek, Walnut Creek, Wildcat Creek.
 11. **Shawnee County** – Mission Creek.
 12. **Wabaunsee County** – East Branch Mill Creek, Hendricks Creek, Illinois Creek, Kuenzli Creek, Loire Creek, Mission Creek, Mulberry Creek, Nehring Creek, Paw Paw Creek, Spring Creek (Paxico), Spring Creek (Tributary of West Branch Mill Creek), South Branch Mill Creek, West Branch Mill Creek.
 13. **Wallace County** - Willow Creek.
- j. The following waterways maintain critical habitat for the Whooping Crane, *Grus americana*, and are subject to the notification requirement above:
1. **Walnut Creek** – in Ness, Rush and Barton Counties which feeds Cheyenne Bottoms.
 2. **Cheyenne Bottoms** – All water bodies within Cheyenne Bottoms.
 3. **Rattlesnake Creek** – in Edwards, Stafford and Pratt Counties which feeds Quivera National Wildlife Refuge.
 4. **Quivera National Wildlife Refuge** – All water bodies within Quivera National Wildlife Refuge.